

1  
2  
3  
4  
5  
6  
7  
8  
9  
10 **UNITED STATES DISTRICT COURT**  
11 **SOUTHERN DISTRICT OF CALIFORNIA**  
12

13 William Thornton,

14 Petitioner,

15 v.

16 Raythel Fisher et al.,

17 Respondents.  
18

Case No.: 16cv2492 PCL

**ORDER DENYING MOTION  
FOR APPOINTMENT OF  
COUNSEL (Doc. 60.)**

19 Petitioner requests that this Court appoint counsel to assist him in his habeas case.  
20 (Doc. 60.) The Sixth Amendment right to counsel does not extend to federal habeas  
21 corpus actions by state prisoners. See McCleskey v. Zant, 499 U.S. 467, 495 (1991)  
22 (citing Pennsylvania v. Finley, 481 U.S. 551, 555 (1987) (“The right to appointed counsel  
23 extends to the first appeal of right, and no further”); Nevius v. Sumner, 105 F.3d 453, 460  
24 (9<sup>th</sup> Cir. 1996) (noting that there currently exists no constitutional right to appointment of  
25 counsel in habeas proceedings); Chaney v. Lewis, 801 F.2d 1191, 1196 (9<sup>th</sup> Cir. 1986).

26 However, courts may appoint counsel for financially eligible habeas petitioners  
27 seeking relief pursuant to 28 U.S.C. § 2254 where “the interests of justice so require.” 18  
28 U.S.C. § 3006A(a)(2)(B); Chaney, 801 F.2d at 1196. Whether or not to appoint counsel is

1 a matter left to the court's discretion, unless an evidentiary hearing is necessary. See  
2 Knaubert v. Goldsmith, 791 F.2d 722, 728-30 (9<sup>th</sup> Cir. 1986) (explaining that the interests  
3 of justice require appointment of counsel when the court conducts an evidentiary hearing  
4 on the petition).

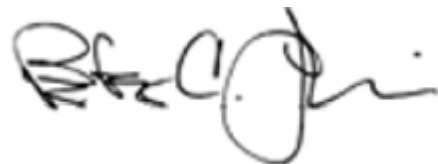
5 A court's discretion to appoint counsel may be exercised only under "exceptional  
6 circumstances." Terrell v. Brewer, 935 F.2d 1015, 1017 (9<sup>th</sup> Cir. 1991). "A finding of  
7 exceptional circumstances requires an evaluation of both 'the likelihood of success on the  
8 merits and the ability of the petitioner to articulate his claims pro se in light of the  
9 complexity of legal issues involved.' Neither of these issues is dispositive and both must  
10 be viewed together before reaching a decision." Id. (quoting Wilborn v. Escalderon, 789  
11 F.2d 1328, 1331 (9<sup>th</sup> Cir. 1986)).

12 Petitioner argues that he is unable to represent herself in habeas proceedings  
13 because he is untrained in the law and his case is legally complicated. (Doc. 60.)  
14 However, "[a]ny pro se litigant certainly would be better served with the assistance of  
15 counsel." Rand v. Rowland, 113 F.3d 1520, 1525 (9<sup>th</sup> Cir. 1997) (overruled on other  
16 grounds, 154 F.3d 952 (9<sup>th</sup> Cir. 1998)). But a petitioner is only entitled to appointed  
17 counsel if he can show "that because of the complexity of the claims he [is] unable to  
18 articulate his positions." Rand, 113 F.3d at 1525. Petitioner has been able to adequately  
19 articulate his habeas claims in his Petition. Accordingly, Petitioner's Motion for  
20 Appointment of Counsel is DENIED without prejudice.

21 IT IS SO ORDERED.

22 DATE: June 21, 2018

23  
24  
25  
26  
27  
28



Peter C. Lewis  
United States Magistrate Judge